

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS DIV.

2009 APR 1 PM 2 07

PATRICK E. DUFFY, CLERK
BY

DEPUTY CLERK

AMUIR SEKOU CLAUSELL,

Petitioner,

vs.

**MIKE FERRITER; MIKE
MAHONEY,**

Respondents.

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CV-09-24-BLG-RFC

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On March 24, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 3*) with respect to Clausell's 28 U.S.C. § 2254 petition for writ of habeas corpus. Magistrate Judge Ostby recommends that the petition be dismissed as an unauthorized second petition.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiff filed an objection on March 31, 2009. Plaintiff's objections require this Court to make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). Plaintiff's objections are not well taken.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

A district court may not consider a second § 2254 petition unless the petitioner obtains authorization from the Court of Appeals. 28 U.S.C. § 2254(b). Petitioner sought authorization, but leave was denied on July 16, 2008. *Clausell v. Slaughter*, No. 08-71809 (9th Cir. Filed April 30, 2008). Thus, this Court lacks jurisdiction to consider his second § 2254 petition. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Petition (*Doc. 1*) is DISMISSED as an unauthorized second petition. A certificate of appealability is DENIED.

The Clerk of Court shall notify the parties of the making of this Order and are directed to enter, by separate document, a judgment of dismissal.

DATED this 1st day of April, 2009.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE